STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 8, 2009
v	No. 282086 Macomb Circuit Court
JEREMY MICHAEL LATSHAW, Defendant-Appellant.	LC No. 2007-000201-FH

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

After a jury trial, defendant Jeremy Michael Latshaw was convicted of insurance fraud, MCL 500.4511(1), and conspiracy to commit insurance fraud, MCL 500.4511(2). He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

An insurance claim was made for an allegedly "stolen" 1998 Honda Prelude owned by defendant's mother in-law, Rosalie Rogers. The car, or what remained of it, was found in a storage unit leased to Douglas Chatman. According to the prosecution's theory of the case, Rogers and defendant conspired to report the car as stolen so that the insurance company would pay off Rogers' debt on the vehicle. Apparently with Rogers' knowledge, defendant took the car and drove it to Chatman's storage unit. In return for his help, defendant allegedly received some parts from the vehicle. To refute the prosecution's claims, Rogers contended that the vehicle was stolen from her workplace and that she immediately leased another higher-cost vehicle. She and defendant maintained that Chatman acted alone in stealing the vehicle.

On appeal, defendant argues that his counsel erred during voir dire by not challenging a juror for cause.

In order to preserve the issue of ineffective assistance of counsel, a defendant must move for a new trial or a *Ginther*[1] hearing before the trial court. *People v Cox*, 268 Mich App 440, 453; 709 NW2d 152 (2005). If the defendant fails to preserve the issue, appellate review is

[1] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

"limited to mistakes apparent on the record." *Id.* "If the record does not contain sufficient detail to support defendant's ineffective assistance claim, then he has effectively waived the issue." *People v Marcus Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Because defendant did not move for a new trial or a *Ginther* hearing on this ground before the trial court,[2] our review of his ineffective assistance claim is limited to mistakes apparent on the record. "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law. A judge first must find the facts, and then must decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review questions of constitutional law de novo. *Id.*

> Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. In order to overcome this presumption, defendant must first show that counsel's performance was deficient as measured against an objective standard of reasonableness under the circumstances and according to prevailing professional norms. Second, defendant must show that the deficiency was so prejudicial that he was deprived of a fair trial such that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different. [*People v McGhee*, 268 Mich App 600, 625; 709 NW2d 595 (2005), quoting *People v Solmonson*, 261 Mich App 657, 663-664; 683 NW2d 761 (2004) (internal citations omitted).]

During voir dire, defense counsel asked a potential juror whether he had "any problem with [the] idea" that an "innocent person may not want to testify at his own trial." The juror responded that he did "maybe a little bit." The juror, who claimed he had gotten into trouble in the past, apparently felt that speaking on his own behalf made him accept what he had done wrong and allowed him to "amend it to a certain degree." After further questioning, the juror acknowledged that an individual should follow his attorney's advice. However, he also stated that he still felt that "you should really defend yourself to a certain degree." He reiterated that he felt that "everyone has a right to a fair trial and everything else." He also indicated that he would follow the trial court's instructions and that he did not "judge a book by its cover." Defense counsel did not challenge this juror, and he remained on the jury through deliberation.

Generally, a trial attorney's decisions with respect to prospective jurors are considered matters of trial strategy, and we decline to evaluate a claim of ineffective assistance of counsel with the benefit of hindsight. *People v Williams*, 240 Mich App 316, 331-332; 614 NW2d 647 (2000). In *People v Robinson*, 154 Mich App 92, 95; 397 NW2d 229 (1986), this Court held that failure to challenge a juror does not provide a basis for a claim of ineffective assistance of counsel. The *Robinson* Court explained, "A reviewing court cannot see the jurors or listen to their answers to voir dire questions. A juror's race, facial expression, or manner of answering a question may be important to a lawyer selecting a jury." *Id.* at 94-95. The *Robinson* Court

[2] Defendant moved for a directed verdict or, alternately, for a new trial on the ground that Rogers was acquitted of the same charges as those for which defendant was convicted. He did not raise a claim of ineffective assistance. Defendant moved this Court to remand for a *Ginther* hearing, but we denied the motion.

continued, "Our research has found no case in Michigan where defense counsel's failure to challenge a juror or jurors has been held to be ineffective assistance of counsel. We cannot imagine a case where a court would so hold, and we do not so hold in this case." *Id.* at 95.

The juror's statements in this case do not indicate any potential prejudice rising to the level that trial counsel clearly should have sought to remove the juror from the panel. The general tenor of the juror's statements showed that although he would prefer that defendant testify, he would be willing and able to act objectively in accordance with the trial court's instructions. Moreover, the juror's comments, taken in their entirety, suggested a level of sympathy toward defendant's situation that counsel could reasonably have read as advantageous to his client. Therefore, defendant has not established that his counsel's actions during jury selection constituted ineffective assistance.

Defendant also argues that his counsel erred by failing to challenge the admission of "inadmissible and unfairly prejudicial evidence of [his] prior police contact." This allegation involves testimony provided by the investigating detective, Macomb Sheriff Detective Rick Seldon, concerning his interview with Rogers. Seldon stated that he asked Rogers whether anyone might have information regarding the theft of her vehicle. Rogers told Seldon that she was not involved in the theft, but that "her son-in-law [defendant] may be involved because of his past history . . . with police officers and contact with the law." During cross-examination, defense counsel asked Seldon whether the earlier contact concerned defendant's role as a prosecution witness against Chatman in an earlier case, in which Chatman was prosecuted for hiding stolen parts in defendant's garage. Seldon stated that he knew they were both involved, "but not the specifics of it."

The next day, Seldon continued testifying. During redirect examination, the prosecutor asked him to reiterate what Rogers had told him regarding defendant's possible involvement in the theft of her car. Seldon stated that he had some reports indicating that defendant "had some contact with police a few years ago [regarding] stolen parts in a garage." During recross-examination, Seldon acknowledged that he did not know the nature of the police contact, that defendant was not charged with having stolen property in his garage, and that defendant was listed as a witness against Chatman in the previous case. Rogers subsequently testified that she never told Seldon that defendant could have been involved in the theft of her car.

Defendant has failed to establish a claim of ineffective assistance of counsel. "Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy, and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy." *Marcus Davis*, *supra* at 368. Defense counsel's extensive cross-examination discredited the thrust of Seldon's initial statements, challenged his investigative skills, highlighted his predisposition to find that defendant was involved, painted defendant as the possible victim of a reprisal by Chatman, and further undermined Chatman's credibility. Counsel was not ineffective in this case.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood